

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LANDSMAN & FUNK, P.C.,	.	
	.	
Plaintiff,	.	
	.	Case No. 08-cv-03610
vs.	.	
	.	Newark, New Jersey
SKINDER-STRAUSS ASSOCIATES,	.	January 29, 2015
	.	
Defendant.	.	
	.	

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Commencement of proceedings at 2:37 P.M.)

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3 THE COURT: Thank you very much.

4 Today is January 29th, 2015. It is approximately
5 2:40 in the afternoon. We're here on case 08-3610, and we're
6 here for a final approval of class settlement hearing,
7 attorneys' fees and incentive award.

8 May I have appearances, please.

9 MR. BELLIN: Good afternoon, Your Honor, Aytan
10 Bellin, Bellin & Associates LLC, class counsel.

11 MR. MCDONALD: Michael McDonald from Gibbons PC on
12 behalf of the defendant.

13 MR. QUINN: Good afternoon, Your Honor, it's Justin
14 Quinn from Gibbons, also on behalf of Skinder-Strauss.

15 THE COURT: Thank you. And seated in the audience
16 is that -- is that Mr. Manochi?

17 MR. MANOCHI: Yes, Your Honor.

18 THE COURT: Is that how you pronounce your last
19 name?

20 MR. MANOCHI: Manochi, but --

21 THE COURT: Manochi, thank you.

22 And Mr. Manochi would like to be heard and posits
23 himself as an objector. Is that correct?

24 MR. MANOCHI: Both the law firm of Lightman &
25 Associates and myself individually, yes, Your Honor.

1 THE COURT: Okay. So we'll give you the
2 opportunity to be heard at some point, and we'll give
3 everybody the attorney to respond.

4 MR. MANOCHI: Thank you, Your Honor.

5 THE COURT: Thank you.

6 So Mr. Bellin, I asked you in chambers to carry the
7 football, if you will, and be the conductor in putting this
8 and the settlement, the proposed settlement on the record
9 today. I accept your submission. It was very, very helpful
10 to the Court. And I'm going to let you carry the day. So go
11 ahead.

12 MR. BELLIN: Thank you very much, Your Honor.

13 Well, first of all, basically, I'll summarize the
14 settlement and then the various factors that the Court needs
15 to consider in determining whether to finally approve the
16 class settlement proposed.

17 First of all, Your Honor, the settlement provided
18 that we would notify people on the class list that was
19 actually -- well, I'll go to the class list later. The
20 settlement provides that anybody who's a mem- -- who can show
21 that they're a member of the class, can be -- will get
22 awarded cash benefits in one of two ways. First of all,
23 there's a common fund that's created by the defendant of
24 \$625,000. And the people can -- class members can make
25 claims on that fund in one of two ways. They either brought

1 forth actual fax advertisements that they had received from
2 the defendant during the time period covered by the class
3 settlement, which is number of months, it's June of 2008,
4 approximately, through August of 2008, I believe. So they
5 can either bring forth an actual copy of a fax advertisement
6 they received from defendant and then get \$500, which is
7 statutory damages under the Telephone Consumer Protection
8 Act, which is the main statute that the class is suing under
9 in this case. Or, alternatively, if people have not retained
10 actual the fax advertisements that they received from
11 defendant, then they can come forward and sign an affidavit
12 saying they had received such a fax advertisement during the
13 time period covered by the class settlement, and depending on
14 the number of faxes they claimed they received, between 1 and
15 5, there'd be different amount of damages that they would be
16 awarded. So if you claimed in your affidavit that you
17 received one fax advertisement, then you get \$175. And up to
18 five fax advertisements, you would get \$275. If you had more
19 than that, you'd still get \$275. Obviously, if people
20 want -- felt that they could bring a case on their own, they
21 were free to opt out. But they -- it was a sliding scale up
22 to \$275 for five fax advertisements.

23 I think it's important to -- to understand in this
24 case that central to the settlement is how the class was
25 determined. Basically, the defendant -- through discovery we

1 realized -- and the defendants told us -- that they didn't
2 have an actual -- the actual class list of persons to whom
3 they sent out these facsimile advertisements during the class
4 period. What they -- what we were able to ascertain is what
5 may have been some of the criteria by which they created the
6 fax list back in 2008 when this faxing took place. And
7 the -- this -- the main dispute -- so they -- they came forth
8 with some criteria they may have used, and the main issue
9 after that portion of the discovery went forward was going to
10 be a debate between our side, the plaintiffs, saying that the
11 criteria that they -- that they had used or that they
12 testified about were sufficiently objective and sufficiently
13 certain to render the class ascertainable, while the defense,
14 I believe, would have said that it was not sufficiently
15 certain because we are only saying what likely criteria we
16 used to create these classes. We don't actually have it.
17 And that was the nut of the issue.

18 It was at that point that the parties realized that
19 they should probably settle the case, because as I mentioned
20 previously, the Third Circuit has a very strict rule on
21 determining ascertainability of class members under Rule 23.
22 That's one of the -- even though that's not listed in Rule 23
23 as one of the factors to determine class certification, the
24 Third Circuit has decided that it is. And they have a very
25 strict rule about determining that. And -- but it is not

1 fully developed. It's only really been litigated strongly in
2 the last year or two. There was a case out in 2012 from the
3 Third Circuit, and then another one called Carrera from 2013.
4 And there's really a lot leeway there for them going one way
5 or another in developing this area.

6 Both sides recognized that there were serious risks
7 if they went forward trying to certify a class based on the
8 information that we -- that had come up through discovery.
9 The plaintiff realized that, given the past strictness that
10 the Third Circuit had made clear in their rulings, that there
11 was a possibility, a reasonable possibility that a class
12 certification would be denied, but it wasn't certain. And
13 the defendants recognized, again, there was still that play
14 in the -- as to what would be sufficient to ascertain -- for
15 ascertainability, and that therefore, they didn't want to
16 risk their client having millions of dollars in damages.

17 So we came after six and a half years of
18 litigation -- and I'll go through the -- how we got to that
19 point, but after six and a half years' litigation, we decided
20 that it's time to settle the case, get the class some money,
21 and move forward.

22 Now, I will go through the Girsh factors, which are
23 the ones set forth by the Third Circuit to -- to help courts
24 determine whether class action settlements are appropriate.
25 The first -- the first Girsh factor is the complexity,

1 expense, and likely duration of the litigation. Well, as far
2 as duration is concerned, we've already had six and a half
3 years of litigation about this. The case was initially
4 dismissed by Judge Hayden in 2009. We immediately appealed
5 to the Third Circuit. The appeal took a total of three years
6 for the Third Circuit to decide. It issued an opinion in
7 2011 which had three separate opinions by each of the circuit
8 judges who wrote one. One of them was a dissent. At that
9 time, as I pointed out in the papers, it was not clear
10 whether federal courts had any type of subject matter
11 jurisdiction over TCPA cases. In fact, the Third Circuit had
12 ruled in 1998 that there was no federal question jurisdiction
13 over TCPA cases. At that time the Third Circuit had never
14 ruled whether there was CAFA jurisdiction under the TCPA --
15 under the TCPA. Judge Hayden ruled that in this case in her
16 initial decision that there wasn't. And that was what we
17 were going up to the Third Circuit about.

18 After they had issued their initial opinion in, I
19 believe it was April of 2011, then the defendants, who were
20 very dogged advocates for their client, asked for an en banc
21 review and actually got that granted, which in itself is
22 extremely unusual and shows how complex and serious the Third
23 Circuit talk- -- took this matter. The case -- the case
24 stayed there until the Supreme Court decided in 2- -- in
25 2012, January, February, I believe, the Mims case, which

1 finally overturned the positions of the vast majority of
2 circuit courts that had held there was no federal question
3 jurisdiction over TCPA cases, the Supreme Court said there
4 was federal question jurisdiction.

5 So then it came back down here again. And the
6 Third Circuit reinstated its opinion except it left open the
7 question as to whether state law controlled federal class
8 actions under TCPA cases because of strange wording in the
9 TCPA itself left the statute open to that interpretation, and
10 indeed, the Second Circuit in 2010, issued the only extant
11 ruling on that issue at the time, and they had said, yes,
12 indeed, you have to apply state class action law for -- in
13 federal court for TCPA class actions. And New York, they
14 ruled you can't go forward with class actions under the TCPA
15 in federal court because the New York courts will not
16 allow -- don't allow these sorts of class actions.

17 The New Jersey state courts in 2011 had ruled
18 similarly under the New Jersey class action rule that you
19 couldn't go forward with class actions under the TCPA in New
20 Jersey state courts.

21 So what they were arguing was, well, just like the
22 Second Circuit did, you Third -- we should apply New Jersey
23 state law and basically point -- out of law.

24 But we litigated that issue, and Judge Hayden was
25 only the second district judge in this district to rule on

1 it. There had been one previous decision. And she ruled
2 that in light of Mims and Supreme Court decisions that,
3 indeed, contrary to what the Second Circuit ruled, that,
4 indeed, there was -- we do apply Rule 23 rather than New
5 Jersey state law.

6 That, again, was another novel issue that was
7 decided.

8 And then after that -- and I'm sorry to go on about
9 this, but I want to make the record --

10 THE COURT: No.

11 MR. BELLIN: -- clear about how hard this was
12 litigated. After that, we filed -- the plaintiff filed a --
13 a class action sort of placeholder class action to prevent
14 the defendants from trying to make an offer of judgment to
15 moot out the class. Again, another area, which is rife with
16 conflict, there are cases in the Third Circuit now on this
17 issue, whether you can moot out a class by making an offer of
18 judgment. There were -- a recent Supreme Court case called
19 Genesis [phonetic], which the other side argued got -- undid
20 all the Third Circuit opinions, and it said you couldn't moot
21 out these sorts of cases in this way.

22 In any event, that was a motion that they made. It
23 was fully briefed by both sides. And then it was at that
24 point that we finally -- after we had the discovery that I
25 mentioned earlier, where I -- I had done a deposition of

1 their witness, who talked about how they created the fax
2 list, that we decided that we should probably just call it a
3 day, given all that.

4 I do want to note for the record and I put this in
5 my papers that the very issue that they raised on this
6 motion, on this third motion to dismiss is now on
7 interlocutory appeal to the Third Circuit. So in other
8 words, these were very, very substantive, strong legal
9 arguments. I have litigated with many defense attorneys.
10 They did a wonderful job. They don't need me to say that.
11 They're from Gibbons. But I would just say that I've
12 litigated against other firms, and luckily for me, I
13 prevailed, but who knows what would have happened, had we
14 continued going forward, or they might very well have
15 prevailed.

16 You know, as you can see, there's a very
17 complicated set of factors. We did depositions as well. I
18 don't want to leave out the fact that we did depositions and
19 documents. They deposed my client for a good part of a day.
20 I deposed some people from them. So there was discovery that
21 went forward as well. And we felt that at the time we
22 decided to settle it, that we had a pretty good idea of what
23 sort of the facts were going to be.

24 In terms of the financial ability of the
25 defendants, capability of satisfying a larger judgment, they

1 have provided some materials to me, and it was obvious, based
2 on those materials, that to push this to the n-th disagree
3 and -- even if we had been -- had an inclination do so, we
4 weren't going to be able to collect the millions of dollars
5 that, you know, theoretically we could collect, had we won
6 everything and got the class certified and so forth.

7 So that's why we went to the settlement. So
8 obviously the complexity and expense have been high up until
9 now. The duration has been long.

10 THE COURT: What about the second factor under
11 Girsh?

12 MR. BELLIN: The second factor, the reactions of
13 the class to settlement. Over 95 percent of the class
14 members were -- were successfully contacted. They were
15 contacted first by email. Then those who weren't contacted
16 by email successfully, were contacted by fax. And then those
17 who weren't successfully contacted were contacted by -- by
18 first-class mail. And about 19,000 successful notices went
19 out, out of 20,000 people on the list that had been created.
20 So the 95 percent notice rate, which is a very, very high
21 rate in these sorts of cases, the class has had -- may have
22 had -- I don't believe it's had any opt-outs -- may have had
23 four or five actually. I think we may have four or five
24 opt-outs. And we've had no objectors, other than
25 Mr. Manochi, who came -- who's here today, and we'll deal

1 with that there.

2 That factor alone goes to show that the class --
3 the class action settlement is fair. The cases are rife
4 about that. You know, even where there are a hundred
5 objectors and there are 20 -- and there are 10,000 class --
6 potential class members, the courts say, no, that's not
7 enough.

8 Here, we have a single one -- or maybe two. He's
9 now saying that he's representing himself personally,
10 Mr. Manochi, so -- but we'll combine that, I'll probably
11 treat them as one for the sake of argument. If it's two, it
12 doesn't really matter.

13 So I would say the reactions -- and we've had over
14 300, you know, claims that were -- that have been validated,
15 so people have come forward and made the claims and thought
16 that it was worthwhile to come forward and make the claims.

17 THE COURT: Right.

18 MR. BELLIN: So I would say that the reaction to
19 class settlement is very favorable, extremely favorable. The
20 only thing that could have been better, had there been no
21 objectors, but you can't have perfections.

22 Moving on to the stage of proceedings, I think I
23 mentioned how much we've gone through --

24 THE COURT: I think you've mentioned stage of the
25 proceedings and the settlement.

1 MR. BELLIN: -- and the discovery. The risk of
2 establishing liability and damages, I think I went through
3 that as well.

4 The risk of maintaining class action status through
5 trial, I believe I covered that. I guess I covered it all in
6 the first factor. But there were risks for both sides.

7 And the ability to withstand a greater judgment,
8 again, talked about that.

9 The range of reasonableness of the settlement in
10 light of the best possible recovery, in light of all the
11 attendant risks, I believe I've covered that as well.

12 And then the parties' comprehensive notice plan,
13 I've covered as well. We've contacted 95 percent of the
14 potential class members.

15 And the final allocation is fair. In fact, it's
16 more than fair, Your Honor, because here we have a situation
17 where, first of all, the person who actually has the fax,
18 gets \$500, which is actually the statutory damages under the
19 TCPA. Theoretically, you could get \$1500 if you tripled --
20 if you tripled -- if they could show a willful and knowing
21 violations. I don't know that we would have been able to
22 show that here. But \$500 is an excellent result for someone
23 who actually had a fax.

24 And now for the people who don't have a fax and
25 just have an affidavit, it's an amazing result. I mean, if

1 they tried to come and prove that they actually got the
2 fact -- the fax advertisement from the defendants, it would
3 be almost impossible, because they wouldn't be able to show
4 that they were class members in any real way. They wouldn't
5 show what faxes they got, what the opt-out notices were.

6 And here, we have a situation where -- there was
7 only one claim of person who actually had a fax. Over 300 of
8 the claims were people who did not have faxes, and they're
9 getting cash awards. And so I think that that is -- that is
10 a more than fair allocation.

11 THE COURT: And just to step backwards -- I don't
12 mean interrupt you, but this was an action that was brought
13 under the Telephone Consumer Protection Act because unwanted
14 advertisements were faxed to various class members.

15 MR. BELLIN: That's correct. That's the position.
16 And also that either had they been solicited, they -- they
17 didn't have the appropriate opt-out notice the FCC requires.

18 THE COURT: Okay.

19 MR. BELLIN: So it was based on those two -- those
20 two theories of liability.

21 So that's -- so under all those factors, I believe,
22 and I submit to the Court that the settlement is an excellent
23 settlement.

24 Now, I can go on to the attorneys' fees, if you
25 want me to, Your Honor.

1 THE COURT: Yes, and those would be the Gunter
2 factors?

3 MR. BELLIN: Yes, those would be the Gunter
4 factors, which the courts have pointed out are very
5 similar to the Girsh factors, so I know I've gone on a long
6 time. I will not repeat myself.

7 THE COURT: No, that's fine, you're helping the
8 Court out enormously. Thank you.

9 MR. BELLIN: So first of all, we're talking about
10 the one-third award is reasonable basis on the size of the
11 fund. And while the fund is significant, \$625,000, we're not
12 talking about megasettlements. Under the case law, when you
13 have megasettlements of a hundred million dollars, that's
14 when the court does say, wait a minute, we're not giving you
15 a third of that. Sometimes they do anyway. But that's when
16 things start getting a little dicey.

17 Here, we're well under anything like that. So
18 that's not a basis not to give the one-third.

19 And in addition, as -- and I'm skipping around some
20 of the factors here, but one-third is really what the market
21 val- -- what the market rate is for these types of
22 settlements. We listed in the -- in the brief many, many
23 cases, class cases, which gave around one-third, some more,
24 some a little bit less, but basically one-third is well
25 within the range, well in the middle of the range of -- of

1 percentage attorneys' fees.

2 THE COURT: And what about the number of persons
3 potentially benefitted. I believe you addressed that?

4 MR. BELLIN: Yeah, well, I said that there were
5 three -- there were 300 -- over 300 people. Now, look, the
6 claim -- and I will address this after -- if you want me to
7 address the objections after Mr. Manochi --

8 THE COURT: Yes.

9 MR. BELLIN: -- make them. I'll -- do you want me
10 to address now or after?

11 THE COURT: No, after we hear from Mr. Manochi.

12 MR. BELLIN: Okay. So but the bottom -- the case
13 law is clear, starting with Boeing, the Boeing v. Van Gemert
14 case, which is a 1980 Supreme Court case, which is a reverter
15 case, just like this one where they said if monies were not
16 claimed, it would revert back -- it would revert back to the
17 defendant, that it's not the number, it's not the class
18 attorney -- attorneys' fees are not based on the actual
19 claims made by class members but what was available for them
20 to claim.

21 And here there was this significant common fund
22 available for them to claim. The fact that they didn't come
23 forward is not a basis to reduce the fees. It's not
24 surprising that after the number of years that this
25 litigation was going on, that there would be 300 out of a

1 potential class, a lot larger class that would have come
2 forward.

3 You know, we made it as easy as possible. We
4 said -- we didn't have to definitive class list. We just
5 didn't have. We didn't have, at least not an established
6 definitive class list. I don't want to concede that. But it
7 wasn't established by any decision of this Court.

8 THE COURT: Right.

9 MR. BELLIN: The parties couldn't agree on it.

10 So therefore, we made it as easy as possible. We
11 said either you have the fax, or if you don't have it, come
12 and just give us an affidavit. That's all you have to do.

13 Even in the absence of what the defendants
14 believed, they believed it was not a definitive class, they
15 were willing to go along with that, which I think was
16 significant.

17 The case started in 2008. It's almost seven years
18 later. Are people really going to -- how -- as you just have
19 pointed out, the one that I do agree, it's hard for people to
20 remember this sort of thing after all that time. But yet
21 there were people who came forward who did remember it. And,
22 again, the reason for the amount of time that went by had
23 nothing to do with any improper behavior on part of class --
24 the class members or class counsel. It had to do with the
25 fact that appropriately defendant's counsel were extremely

1 | zealous advocates for their clients. They made every
2 | possible argument that you could really make -- that you
3 | could really make in good faith.

4 | So the fact -- the fact that, you know, 300 people
5 | came forward and not 10,000 is not surprising. Usually in
6 | these cases, the response rate is relatively low. In
7 | consumer cases. In the Third Circuit, in the Baby Products
8 | litigation that the defendant -- that the objector cites,
9 | point out that they don't want to discourage class actions
10 | where there are -- where you don't -- where you think there
11 | may not be as much of a response by the class by penalizing
12 | attorneys for bringing those types of cases.

13 | So let me -- was that -- was that sufficient,
14 | Your Honor?

15 | THE COURT: Yes, no, that's good.

16 | MR. BELLIN: Do you want me to address that
17 | anymore?

18 | Okay. And then class counsel handled this action
19 | in a skilled and effective manner. I think I represented
20 | that.

21 | Litigation was complex and of significant duration.
22 | We talked about the risk of nonpayment.

23 | Plaintiff's counsel devoted substantial time. We
24 | did. We worked on this for six and a half years, we had over
25 | \$300 [sic] of time that we put into this. And went up on

1 | appeal and had multiple submissions to the Court, so I think
2 | that is clearly satisfied.

3 | THE COURT: And that handles complexity and
4 | duration of litigation.

5 | And what about your firm's and yourself's skill at
6 | handling these types of case?

7 | MR. BELLIN: Well, we -- this is one of the main
8 | focuses of -- of our firm. We do a lot of these. We have a
9 | reasonable number of them in the District of New Jersey. In
10 | fact, we just settled another -- another case earlier this
11 | week in front of Judge Bongiovanni that, again, was with
12 | Gibbons, so we do a lot of these cases. We have them all
13 | over the country. We have them in Massachusetts. And we
14 | have them in Minnesota now, so we do this a lot. We've done
15 | them for years. And there many, many published opinions on
16 | this area that have my firm's name on it, my name on it as
17 | well. So, you know, we -- we're probably among the most
18 | active, if not the most active in sort of the New York-New
19 | Jersey area in bringing these sorts of -- these sorts of
20 | class actions.

21 | So I've been a lawyer. I graduated law school in
22 | 1991; hard to believe. And so I've been a lawyer for 24
23 | years almost. And my colleague, Brian -- who did a little
24 | bit of work in this case, has also been on for many years in
25 | class actions. And my associate is older -- graduated in

1 1989 and has worked on these cases with me.

2 THE COURT: Risk of nonpayment?

3 MR. BELLIN: Well, there was a risk, because,
4 again, for the very reason that we didn't know what the Court
5 was going to do vis-à-vis a class action motion. We could
6 have had -- we could have come up with a big goose egg after
7 all this work, and the class could have gotten absolutely
8 nothing. So I think there was a reasonable risk of non- --
9 nonpayment. We would have argued otherwise, had we argued
10 it. But now we're here at the final settlement approval
11 conference, and I will say candidly that it was a difficult
12 issue. Very, very difficult issue.

13 THE COURT: What about awards in similar cases?

14 MR. BELLIN: Courts have awarded -- well, courts
15 have awarded, as I pointed out before, one-third awards. The
16 cases out in California where we got 1.1 million out of 3.3
17 million. But TCPA cases, I will -- there have been TCPA
18 cases, but all at one-third. The case just with Judge
19 Bongiovanni earlier this week, I didn't get to put it in the
20 papers, but she also award- -- she awarded one-third
21 attorneys' fees out of a \$2.6 million, approximately, common
22 fund.

23 So it's similar to what's been awarded in other
24 fees in other cases like this. We did exclusively prosecute
25 this case. There was no government involvement in this at

1 all. And the requested fee is consistent with private fee
2 agreements of up to -- of one-third, which I raised earlier.

3 Then we get to the lodestar check, which is
4 probably the most -- probably one of the most convincing
5 factors here in terms of the attorneys' fees. The Third
6 Circuit routinely says -- routinely -- and they go much --
7 they go higher than this, have said that a lodestar of 1 to 4
8 is routine. Ours is 1.95. You know, so -- if we get a
9 third, we're getting 1.95. We've had many -- multipliers
10 much higher in other cases, and especially given the novelty
11 of this case, you know, if we -- if there was a larger common
12 fund, you know, I'd have asked for more multipliers. But the
13 common fund's what it is, and I'm not going to -- we're not
14 going to ask more than one-third because the bears win and
15 the bulls win and the hog gets slaughtered. So we're not
16 going to -- we're not asking for that.

17 But given we're asking for the one-third, the
18 lodestar ratio of 1.95's really so well within the standard
19 of -- that it goes even more to show how fair the attorneys'
20 fees request is.

21 Now, I can turn to the incentive award.

22 THE COURT: Yes.

23 MR. BELLIN: This case -- this case has been going
24 on for six and a half years, and, you know, the law firm that
25 was -- that, it actually doesn't even exist anymore. It just

1 continues because it's continuing as a plaintiff because --
2 continues because it's a plaintiff in a couple of these
3 cases. But Mr. Landesman had been resolved with us, he
4 helped -- he had -- he helped us respond to discovery
5 requests, he showed up for a deposition in Newark, and he's
6 been -- you know, just been involved with it for six and a
7 half years. This is one of those cases where we're asking
8 for \$10,000 incentive award seems -- seemed very reasonable.

9 THE COURT: Now, this class has been preliminary --
10 preliminarily certified by Judge Hayden. Is that true?

11 MR. BELLIN: That's correct, Your Honor.

12 THE COURT: And with respect to the Rule 23
13 factors, was there a finding by Judge Hayden?

14 MR. BELLIN: I think for the purposes of
15 settlement, she preliminary -- she certified the class.

16 THE COURT: Okay.

17 MR. BELLIN: Preliminarily certified. And now that
18 we've had responses, we actually have class members. We
19 actually know who -- that there are over 300 class members
20 who certify the requirements that we set forth, you know,
21 that were part of the settlement agreement. You know, the
22 standard rule is that if you have a class of 40 or more, that
23 satisfies the numerosity. Here, clearly, we do. If there
24 are common issues of law and fact, common issues of law,
25 whether the faxes that they sent out violated the TCPA,

1 whether they were advertisements, of fact, whether these
2 clients actually got them and so forth. Those -- those, as
3 Judge Hayden, I believe, found those questions of law and
4 fact predominate over any individual issues. So there were
5 no individual issues. And --

6 THE COURT: Typicality?

7 MR. BELLIN: I'm sorry?

8 THE COURT: Typicality?

9 MR. BELLIN: They -- yeah, the claim of the -- the
10 claim of the class plaintiff, who actually got one of the
11 faxes during that period of time. These faxes were
12 advertisements, was one part of -- as I understood it from
13 discovery, was part of one-time -- not a one-time fax -- fax,
14 they faxed it a number of times, I believe, over the period,
15 the three-month period. But it was an effort on the part of
16 the defendants who put together the *Lawyers Diary and Manual*,
17 that's the --

18 THE COURT: Right.

19 MR. BELLIN: -- the defendants, to have people
20 advertise -- to have lawyers advertise their services in
21 their -- they'd divide the manual, I believe, into certain
22 sections for family law or trust and estates or whatever, and
23 attorneys would -- it was -- asking them to advertise in
24 those sections, if I'm remembering this correctly. And that
25 was what they were trying to do, and that's exactly the fax

1 that my client got. And it was all part of a unitary program
2 that they had to fax out those advertisements. So my client
3 was completely typical of -- of all the -- all the class
4 members.

5 So I believe that we -- we satisfied all the
6 requirements for Rule 23 and that, you know, the class should
7 be finally approved.

8 THE COURT: Let me -- let me hear from the
9 objector, Mr. Manochi.

10 Why don't you come on up and make yourself at home
11 either at the podium or the table, wherever you're more
12 comfortable.

13 MR. MANOCHI: Wherever everyone can hear me, I
14 think would be probably be best and if you don't mind, right
15 here. Can I hear you? Can you hear me?

16 THE COURT: I can hear you.

17 MR. MANOCHI: Okay.

18 Your Honor, Glenn Manochi here on behalf of the law
19 firm of Lightman & Associates, now known as Lightman &
20 Manochi, as well as myself individually. I'm here today to
21 forward the objections that have already been submitted to
22 the Court, and I ask the Court to take a look at each one of
23 those and consider them, given Mr. Bellin's presentation
24 today.

25 I'd kind of like to hit some of the high points of

1 | them, not to belabor the issues, as I'm sure Your Honor will
2 | read them.

3 | First point is I'm sure they're going to object
4 | because they don't believe we have standing to raise the
5 | issues here today. I believe we do for a couple of reasons.
6 | First and described in the papers, in my declaration, we
7 | received, we do our due diligence, we're on the list, we went
8 | and hunted down the fax and finally found what was going on
9 | here.

10 | And that's one thing I'd like to add to that today
11 | is the way this whole list came up from Mr. Krivitzky's
12 | deposition, who represents Skinder-Strauss. He's their
13 | general counsel. He put that list together, and a couple of
14 | times in that affidavit of his, he put -- he used the phrase
15 | that we were presumptive recipients of faxes. Okay. So --
16 | and that's way the list was generated. So I would think that
17 | this Court should use that as the fact that there is a
18 | presumption that the list was sent to these people that were
19 | on -- on there just based on Mr. Krivitzky's own affidavit.

20 | And more importantly, based on the fact that
21 | there's a presumption before this Court, there needs to be
22 | some evidence that rebuts that presumption that says I am not
23 | or Lightman & Associates is not a member of this class.
24 | There being none, I think we have standing. So in addition
25 | to the arguments that we raise in our papers, I would ask the

1 Court to consider that argument as well.

2 But the second high point is, you know, I think we
3 need to do some math here just to understand who's getting
4 what from this settlement. And as -- as pointed out by class
5 counsel, this is a reverted case, so whatever dollars don't
6 flow to the class members or to class counsel, flow back to
7 the defendants themselves.

8 Just put that aside for a second. The way this --
9 the actual dollar amount that's going to flow based on what
10 class counsel presents is as follows. And before I get to
11 that, let me just kind of alert the Court to the fact that
12 there's a Third Circuit case in Baby Products, which I think
13 is an additional factor that must be construed by the Court
14 to determine the reasonableness of the attorneys' fees in
15 this case. You know, the decision is -- is in there that the
16 court as part of its function needs to determine the direct
17 benefit that is being received by the class. I think, based
18 on the papers that are here in front of the Court today,
19 that's -- that doesn't jibe with the amount of attorneys'
20 fees that is being requested by class counsel.

21 The math is pretty simple. You look at the class
22 administrator in the papers submitted, and there is
23 essentially, as I did the math, based on what was received as
24 of January 22d, 2015, there is a total of \$58,000 -- \$58,225,
25 that is actually going to be distributed. All right? There

1 is a couple -- you know, there's -- there's maybe some lag in
2 terms of stuff that hasn't been received. But that is the
3 total amount that is going to be distributed based on --

4 THE COURT: The 300 class members?

5 MR. MANOCHI: Yeah, the 350 -- whatever that number
6 is, and you can see -- yeah, a total of 304 confirmed claims,
7 based on the affidavit submitted by Ms. Keogh, I believe.
8 Yes.

9 Mr. Class Counsel's asking for \$208,000, which is
10 some three and a half times that amount. We submit that that
11 is not a reasonable request based on the direct benefit
12 that's going to flow to the class members here. And we,
13 thus, think that that is a number that shouldn't be awarded
14 and that is, in fact, unreasonable and unfair to the class
15 members themselves.

16 THE COURT: So how many dollars in reversion, if
17 you will, does that leave --

18 MR. MANOCHI: Well, if I -- I did the math while we
19 were sitting here. And I -- there was nothing in the papers
20 with regard to what the claims administrator's being paid
21 that I could see. So that's -- that's a function that has.

22 So if we're paying \$208,333 to class counsel,
23 58,325 to the actual class members, \$10,000 to Mr. Landesman,
24 that's a total of \$278,658. And my math shows that \$346,000,
25 or well over half of the supposed \$625,000 claim amount is

1 going to revert back to the defendants in the case.

2 And you'll see in the papers, there are -- there's
3 courts, on numerous occasions, that really work out these
4 reverter cases very carefully, because there tends to be a --
5 at least a possibility or the appearance that counsel is not
6 really representing the class, which I don't think they are
7 in this case, because you're getting \$58,000, but instead,
8 counsel is kind of more concerned with the fees rather than
9 to the benefit of the class members.

10 THE COURT: So you're saying fees would ultimately
11 be disproportionate if, in fact, the distribution were
12 200-and-some-odd-thousand dollars.

13 MR. MANOCHI: Well, the direct benefit to the class
14 as we are in this courtroom today is \$58,325.

15 THE COURT: Right.

16 MR. MANOCHI: We submit as a matter of law -- and
17 you read the cases, that a three-and-a-half-time amount going
18 to an attorney, based on that recovery is unreasonable,
19 regardless of what criteria you use; whether you use a third
20 or hourly rate or whatever, it's just not reasonable and fair
21 to the class members.

22 You know, we've heard arguments here too that,
23 well, we had trouble finding, you know, another way to get
24 money to the class members or the potential class members,
25 but yet there's lots of ways we could have had claims that

1 | were submitted and, you know, give a relatively smaller
2 | dollar amount, if you couldn't meet the very, very high bar
3 | that you had in these cases for the purposes of making a
4 | claim.

5 | And, you know, you see them. You know, to get the
6 | actual fax from seven years ago, 500 bucks. And one of those
7 | guys came through. And I pretty much assume that that's
8 | Mr. Landsman, who submitted the affidavit there.

9 | So everybody else, didn't hold the fax, doesn't
10 | remember, or -- you -- 300 in claims, and, you know, I'm sure
11 | they're all -- they all believed under penalties of perjury,
12 | which you're required to do in three separate steps in this
13 | claims form, that -- that -- and they believe are legitimate
14 | claims.

15 | But I think the bigger issue here is the fact that
16 | there is a -- a very tough bar here that you had to make
17 | claims. And in cases like Baby Products, for instance, there
18 | was a class that got paid a much lesser amount -- excuse
19 | me -- a much lesser amount, you know, where they didn't have
20 | a receipt for the purchase of the product. If you just --
21 | you wrote in, you said I believe I got something, well, you
22 | got \$5, \$10, or whatever it is. But that really kind of
23 | focuses, at least in this case, one of the problems with the
24 | case, the fact that you don't have this intermediate ground
25 | where you have these very, very, very high bars, which we

1 submit was a possibility of why there's only 304 claims out
2 of 20,000, and there's no middle ground here. And if it's --
3 this is truly a \$625,000 settlement fund, then there should
4 be some mechanism in which the defendant says, you know what?
5 I'm giving up that money, it goes to the class, it's not
6 coming back to me in any -- in any regard except the -- you
7 know, so in other words, no reversion of whatever's left over
8 going back to the defendant.

9 You know, we just think that those are some of the
10 issues here that present problems as far as objectors are
11 concerned.

12 There's -- there's also, you know, this notion that
13 even if, in this case, this Court were to determine that the
14 fee that the class counsel is proposing is unreasonable, this
15 settlement agreement requires that that money go back to the
16 defendants in the case.

17 There is some case law that we cited there, the
18 Staton case there, that indicates that at least in the Ninth
19 Circuit, where that is not a good outcome just because you
20 don't want to reward a defendant for purported bad behavior,
21 at least to the point where they're willing to settle, so
22 those -- those sorts of moneys shouldn't go back.

23 So for all of those reasons, and as well as the
24 other reasons that we cite in our objection, we don't think
25 that this settlement is either fair or reasonable.

1 THE COURT: Thank you.

2 MR. MANOCHI: Thank you.

3 THE COURT: Very much.

4 MR. MCDONALD: Your Honor, may I be heard briefly?

5 THE COURT: Mr. McDonald, yes. Sure.

6 MR. MCDONALD: I just want to address a couple of
7 the objector's points, and I leave the counsel fee issue to
8 Mr. Bellin and I think Mr. Quinn might have some words as
9 well.

10 With respect to the -- the objectors, there's no
11 standing here, Your Honor, for the objector to make --

12 THE COURT: What about this presumptive receiver of
13 fax?

14 MR. MCDONALD: Well, what we're -- what he's
15 talking about a statement in the affidavit which explains how
16 the -- how the fax list was created. And so what the
17 affidavit is saying is, based upon all the criteria that was
18 learned in discovery from the individual who conducted the
19 process, the company believes that this is -- this is the
20 best list we can come up with.

21 The notice to the class says that there is a class
22 action, and the reason you're being notified is because you
23 might be a class member.

24 THE COURT: Right.

25 MR. MCDONALD: Not that are a class member. It

1 says you might be a class member.

2 And you can determine if you're a class member
3 either one of two ways. Either, one, you have a fax, or
4 number two, you remember receiving the fax or have some
5 record somewhere of receiving the fax, and are able to sign
6 the statement that says you have a -- you have received a
7 fax.

8 Counsel talked about, you know, a high bar, and he
9 raised his hand pretty high. The high bar is writing your
10 name. You know, this is -- I swear that this is true that I
11 believe I received a fax. It's not -- that's not a difficult
12 bar. And over 300 people have already signed under penalty
13 of perjury that they believed they received these faxes.
14 These are all lawyers who have received fax advertisement
15 from the publisher of the *Lawyers Diary*.

16 But to have standing to come in and attack a class
17 action settlement, that requires you to be a class member.
18 And none of the actual members of the class that objected to
19 the class and as of the last report from the claims
20 administrator, there were no people who had opted out. And I
21 think that was in your brief, in the brief from Mr. Bellin.

22 THE COURT: It was.

23 MR. MCDONALD: With respect to the actual substance
24 of the objector's argument, he makes a point about the
25 reversion and the reversion being somehow improper. Well,

1 | there's nothing in the law that says the reversion is proper.
2 | Particularly in a case like this where you have a case where
3 | there's -- we're not talking about instances where people
4 | were harmed either physically or economically.

5 | This is statutory damage case where people are
6 | entitled to receive a benefit of a penalty if they can
7 | establish a violation of the TC -- the TCPA.

8 | Class action settlements have been approved very
9 | recently within the Third Circuit where there are reversions.
10 | That's part of the agreement. And the Court, with all due
11 | respect, is not at liberty to change the agreement. So this
12 | is the agreement that we've reached with the assistance of
13 | Magistrate Judge Hughes and negotiated with plaintiffs for a
14 | very, very long day. And we reach an agreement that we
15 | thought was in the best interests of the class and both
16 | parties, and that agreement called for the payments that you
17 | see that are -- out in the papers, as well as the reversion
18 | for any class claim, for any monies that wouldn't be left
19 | over after the payment of counsel fee, after the payment
20 | period of all claims, after the payment of the claims
21 | administrator's fees.

22 | So going into the settlement, all parties
23 | understood that there was a fund that would pay everything.
24 | And if there's anything left, it would go back to the
25 | defendant. There was no guarantee that there was anything

1 coming back to the defendant.

2 I will let Mr. Bellin address any issues with
3 regard to the counsel fee objection.

4 And unless Your Honor has any other questions.

5 THE COURT: No, thank you very much.

6 MR. BELLIN: Thank Your Honor. I just want --

7 THE COURT: Mr. Quinn, are you sure you don't want
8 to say anything?

9 MR. QUINN: I'm happy to say something. And thank
10 you for the opportunity.

11 THE COURT: I'm sorry, Mr. Bellin.

12 MR. BELLIN: That's all right. That's perfectly
13 fine.

14 MR. QUINN: So I just -- under the terms of the
15 settlement -- under the terms of the settlement agreement, I
16 think it's pretty clear why Mr. Manochi and his law firm
17 don't have standing.

18 So to obtain payment from the fund, the claimant
19 needs to be a class member, which is defined in the
20 settlement agreement as anyone who from June 15th, 2008,
21 through August 31st, 2008, was sent or caused to be sent one
22 or more facsimiles. And Mr. Manochi's brief and declaration
23 make clear why he is not a class member. He says he didn't
24 receive a fax. He doesn't remember -- he doesn't remember
25 ever receiving a fax. By definition, he is not a class

1 member. And under settled law, only class members can
2 object.

3 So -- but under settled law and by his own brief
4 and declaration, he's not a class member, and he doesn't have
5 standing to object, Your Honor. And for that reason, his
6 objection should be overruled.

7 Thank you.

8 THE COURT: Thank you, Mr. Quinn.

9 Mr. Bellin.

10 MR. BELLIN: Yeah, not to beat a dead horse,
11 Your Honor, I just want to --

12 THE COURT: That's a bad expression in this
13 courtroom. I'm a horse owner. Mr. Quinn knows.

14 MR. BELLIN: Sorry about that.

15 MR. QUINN: I know that. That's exactly why they
16 said it.

17 MR. BELLIN: The case law is clear. The burden is
18 on the person coming -- the burden is on the person coming
19 forward claiming to be an objector to show they're a member
20 of the class. It's not our burden to show that he is not.
21 And that's one of the main flaws of his position.

22 Again, in his affidavit, he says he doesn't have a
23 fax, and he says I don't recall having a fax -- getting a
24 fax. He says that is why I couldn't swear that I got a fax,
25 because he doesn't recall. That by definition, means he's

1 not a class member. Now, he's relying on this list that was
2 put together by Mr. Krivitzky, I think that Mr. McDonald made
3 clear why that is insufficient. That was a list to help us
4 get -- to find out who the members of the class actually were
5 going to -- actually going to be. We didn't have an absolute
6 list.

7 And so clearly he doesn't have standing.

8 There's no legal presumptive -- there's no legal
9 presumption that he's a class member based on that list. The
10 fact that he used the word in the thing we presume, and it
11 means he assumes it, because it's the best they could put
12 together. But we don't really -- he's not saying that he
13 doesn't really know it, and they never would say that they
14 know it, because if they said they knew it for sure, I
15 would -- we wouldn't have settled this case. The whole point
16 was that they were saying they didn't know and we were saying
17 it was sufficiently certain, and therefore we came to the
18 conclusion.

19 Okay. Now, this whole argument about reverters and
20 not likely reverters, it's all well and good, except for one
21 thing: The Supreme Court in Boeing v. Van Gemert in 1980
22 ruled that that was okay. It was a reverter case. That was
23 a reverter case, and the Supreme Court said that was fine.

24 And not only that, but courts since then have said
25 that that was fine. And the Third Circuit in Baby Products

1 case that he cites, you know, it says that Boeing does say
2 that. It says now, the district court in an appropriate
3 circumstance, if the district court finds that class counsel
4 have not made sure to the best of his or her ability that
5 class members will have access to funds and makes it to where
6 they get access to it, you know, by some machination, the
7 Court says in that situation, it may be an appropriate time
8 to reduce the fees.

9 That's clearly not what's going on here. In fact,
10 it's very interesting, I wonder -- and I'm only finish
11 hypothetically, not to ask Mr. Manochi to stand up again, but
12 what is his standard for someone making a claim here? He's
13 saying there should be a lower standard. Well, if a person
14 doesn't remember they got a fax and they don't have the fax,
15 how can you make a claim? I mean, it's as simple as that.
16 We made this as easy as possible. If someone actually
17 remembers, they can say, I swear I remember.

18 THE COURT: Well, he says in Baby Products that
19 some of the class members said I may have purchased this
20 product or used this product.

21 MR. BELLIN: I don't believe that that's -- I don't
22 believe that's a fair reading of Baby Products.

23 Not only that, Your Honor, but when you look at
24 Carrera, the issue -- the issue in baby -- in that case was
25 not what makes a class member ascertainable. If you look at

1 Carrera, the Third Circuit takes a dim view of people coming
2 forward and make- -- using -- even using affidavits. That --
3 we settled on this and we believe that this is the proper
4 settlement, but had we pushed it, that's what we were facing.
5 If they had ruled --

6 THE COURT: Especially in light of Third Circuit
7 law on ascertainability.

8 MR. BELLIN: Correct, in Carrera. I mean, Carrera,
9 you know, they say -- you can't just -- you -- they don't
10 like it when people come forward and just swear.

11 Now, here, we would have had this other -- this
12 list and the evidence that -- that they used certain factors
13 or what I would say was sufficient evidence. So it would
14 have been a different case.

15 But we're -- what we're doing here is something
16 that is -- to say the least, it's sort of the lowest level
17 that we can arguably come in front of you and say that is
18 appropriate.

19 If someone -- if you say I may have gotten
20 something, how can you get -- how can you get any monies
21 back. That's not the way our legal system works. You have
22 to have some sort of proof, at least a recollection. And
23 he's saying that people don't have a recollection. Oh, well,
24 I may have gotten it. I don't know. Give me some money.
25 You know, the comment is not how -- how cases work in federal

1 courts or in the state courts.

2 He talks about again the direct benefit to the
3 class in saying that the appropriate -- the appropriate
4 definition of looking at the direct benefit to the class is
5 what did the class actually claim.

6 But, again, barring -- and numerous courts from
7 other circuits have made clear that that's not what you look
8 at. The benefit to the class that is referred to is the fund
9 that is made available through -- through class counsel's
10 efforts; not what is claimed, but what is made available for
11 claim.

12 And so for him to focus on -- and he admits in his
13 brief, he says, well, you know, it's true that some courts
14 have said that you should look at -- you should look at the
15 amounts claimed. You should look at the amount that was made
16 available. And he says Boeing. But he says Boeing is no
17 longer good law. That's what he says. He says the Supreme
18 Court case is no longer good law.

19 How he comes to that conclusion is beyond me,
20 especially since the Third Circuit in the Baby Products case
21 that he cites cites Boeing and says that it's good law, which
22 is a 2013 case. So I'm just not clear about that.

23 Also strangely, now we have the argument that
24 instead of giving out the amounts that we're giving out, we
25 should have given out lower amounts, smaller awards to class

1 members? I don't see how that benefits anybody, that
2 everybody should get a dollar instead of getting from 175 to
3 \$275, and they should --

4 THE COURT: Well, your -- your point that preceded
5 about that if they thought they have received it and can sign
6 a certification or affidavit, I mean what is the next level
7 lower? You posed the question a few minutes ago. What is
8 the next level? Is that I could have --

9 MR. BELLIN: I may have -- I could have received
10 it.

11 THE COURT: -- I should have received it. I could
12 have been on a list.

13 MR. BELLIN: I could have received it. I'm on this
14 list, and even though it's something that was created to help
15 us get to the class members, that means I did receive it.

16 It means nothing of the nothing of the kind, and
17 that's the very issue that the parties did not want to
18 litigate.

19 So I don't think it -- you know, the attorneys'
20 fees, I've gone through all the factors. I think I've
21 responded to his claims. I think they're more than
22 justified. Again, the lodestar itself cries out and makes
23 clear that it's an appropriate award.

24 Thank you, Your Honor.

25 THE COURT: Thank you.

1 Mr. Quinn?

2 MR. QUINN: Can I just make one last point,
3 Your Honor.

4 THE COURT: And then Mr. Manochi, if you want to
5 come back up.

6 MR. MANOCHI: May I respond?

7 THE COURT: Sure.

8 MR. MANOCHI: I'd appreciate that, Your Honor.

9 THE COURT: Absolutely.

10 MR. QUINN: Thank you, Judge. Part of the
11 objective basis for standing is an email that he received
12 from the claims -- the claims administrator in this case.
13 And I just want to -- to point out one thing. The language
14 which was improper and incorrect says you are a class member.
15 But attached to that email was the form of notice that was
16 sent out in this case and approved by the Court. And if you
17 look at Exhibit 1 from Mr. Bellin's brief, it says, and I
18 quote in big, bold, black language on top: If you received a
19 facsimile advertisement from Skinder-Strauss, you could get
20 payment from class action settlement.

21 And if you go a little bit lower, who's included?
22 You are a class member and could get benefits if you received
23 a fax -- fax advertisement from Skinder-Strauss.

24 So, judge, there's qualitative language there.
25 It's clear. And I just wanted to point that out for

1 Your Honor.

2 And the same is true on Exhibit 2, which is the
3 longer form of notice, which was also approved by the courts.

4 THE COURT: Right.

5 MR. QUINN: Thank you, Judge.

6 THE COURT: Thank you, Mr. Quinn.

7 Mr. Manochi.

8 MR. MANOCHI: I'll keep it brief, Your Honor. I
9 just -- I just wanted to kind of hit some of the high points
10 here.

11 You know, I think we have a self-fulfilling
12 prophecy here. I mean, if you look at it, 20,000 possible
13 claims, 350 actual -- 304 actual claims. And I mean, do the
14 math here. I mean, if -- if there was reasonable -- if this
15 was reasonably objective standards to get to members of the
16 class, would we have had the result that's before this Court
17 today?

18 THE COURT: I don't know.

19 MR. MANOCHI: I don't know either. But all -- but
20 all I know is now that, you know, look, I'm trying to object
21 because I don't remember what happened six years ago, and
22 suddenly everybody's saying, well, it's simple, you just sign
23 this affidavit, and it says under penalty of perjury that you
24 got this thing six years ago, and you're in.

25 I submit to the Court that that is the exact

1 process here, that's limiting the number of claims that are
2 before this Court and as a result --

3 THE COURT: The fact that people don't remember
4 whether or not --

5 MR. MANOCHI: They don't --

6 THE COURT: -- they received this --

7 MR. MANOCHI: Sure.

8 THE COURT: -- advertisement.

9 MR. MANOCHI: You've got to submit to a federal
10 court under a penalty of perjury that you received this
11 thing. People are going to be -- you know, do I really want
12 to get involved in this if I don't remember, so they're going
13 to -- they're going to err on the side -- not side of not
14 responding to the -- to the claim objection.

15 I don't mean to say and I don't think Baby Products
16 says that the -- that the claims -- that there was a class of
17 claims, and it's in the case itself, I am not making it up,
18 that can -- to where the parties in that case decided that we
19 wanted some level lower than actual proof of receipt of the
20 product that you bought. And what they came up with is
21 saying that if you said -- if you believed that you got
22 something, you're entitled to submit a claim.

23 We submit that here, if people really wanted to do
24 that, they would have done that. You know, it is not -- part
25 of the process of going through all of this, you'd have to

1 fill something out, and people, if they're not really
2 interested in -- in getting whatever the reduced number would
3 be if you can't swear under penalties of perjury, people
4 would still fill the thing out if they felt it was worthwhile
5 for whatever number it is.

6 But the class here, unfortunately, didn't have the
7 opportunity to do that.

8 So I submit that, certainly based on the papers,
9 and, you know, you can read the -- the email that I received
10 that says I'm a class member, and, you know, I've gone ahead
11 and done that. And it's interesting to note too that this
12 class is -- this class of people that -- let me -- I don't
13 want to misquote this here. Okay. The class is a member of
14 people -- of people through a particular period of time
15 June 8th -- June 15, 2008, through August 31, 2008, was sent
16 or caused to be sent one or more facsimiles.

17 So it seems to me that the burden of the parties
18 and the -- before this Court here is to establish who was
19 sent that and not require me to say or require any objector
20 to say I received it.

21 THE COURT: Well, I don't think that's what went
22 on.

23 I think the problem in the case -- and "problem"
24 may be the wrong word -- is in going forward to very
25 specifically ascertain the class, which is what caused this

1 negotiation settlement. I don't think anybody's
2 burden-shifting with respect to receipt of the fax or
3 potential receipt of the fax.

4 But I understand what you're saying is there may be
5 a lower level that could have been resorted to in settlement
6 of people that may have had some inkling that they received a
7 fax, other than they may have received a fax.

8 MR. MANOCHI: Yeah, and I am not suggesting that,
9 you know, I understand there is a length of time that went
10 on. And I understand that this thing went up before the
11 Third Circuit.

12 But there is a real fact of life here is that
13 there's been passage of time from the time that the alleged
14 wrongs occurred to the time that the settlement notice went
15 out, that's six and a half years. And it would seem to me
16 that, given that length of time, that there should have been
17 some at least consideration of some lesser standard so if
18 this is really a \$625,000 pot, that there would be more
19 people that would be able to participate in receiving a
20 portion of that money.

21 THE COURT: I see.

22 MR. MANOCHI: I have no further.

23 THE COURT: Thank you.

24 MR. MANOCHI: Thank you, Your Honor. Thank you
25 very much, sir.

1 All right. I appreciate everybody's participation,
2 and certainly the submissions, which were excellent, and I
3 commented on them. We will issue an order and opinion in
4 short order. So thank you very much and have a nice weekend.

5 MR. BELLIN: Thank you very much, Your Honor.

6 UNIDENTIFIED SPEAKERS: Thank you, Your Honor.

7 (Conclusion of proceedings at 3:34 P.M.)
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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 48 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

6th of July, 2015

Signature of Approved Transcriber

Date

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